

NO. 24451

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

GINAI K. JOHNSTON, Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CR. NO. 01076691)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Ramil, and Acoba, JJ.)

The defendant-appellant Ginai K. Johnston appeals from the judgment of the district court of the first circuit, the Honorable Fa'auuga To'oto'o presiding, convicting her of and sentencing her for, inter alia, the offense of resisting arrest, in violation of Hawai'i Revised Statutes (HRS) § 710-1026 (1)(a) (1993). Johnston's sole point of error on appeal is that there was insufficient evidence to support her conviction of the offense of resisting arrest, because her conduct during the arrest did not constitute "physical force that creates a 'substantial risk' of bodily injury."

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we affirm the judgment of the district court. Viewing the evidence in the light most favorable to the prosecution, Johnston's act of grabbing Honolulu Police Department Officer Kono's arm and pulling it towards her mouth, intending to bite his arm,

constituted the use of physical force, or the threat to use physical force, against a peace officer within the meaning of HRS § 710-1026(1) (a). See State v. Batson, 73 Haw. 236, 248-49, 831 P.2d 924, 931 (1992), reconsideration denied, 73 Haw. 625, 834 P.2d 1315 (1992). Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, March 27, 2002.

On the briefs:

Jon N. Ikenaga (Deputy
Public Defender), for the
defendant-appellant,
Ginai K. Johnston

Mark Yuen (Deputy
Prosecuting Attorney), for
the plaintiff-appellee,
State of Hawai'i